

**1650 Arch Street  
Philadelphia, PA 19103**

Portland Generating Station  
P.O. Box 238  
Portland, PA 18351

Shawville Generating Station  
Route 970, Box F  
Shawville, PA 16873

**Keystone Generating Station**  
313 Keystone Lane  
Shelocta, PA 15774-2305

Reliant Energy MidAtlantic Power Holdings, LLC  
Reliant Energy Northeast Management Company  
Keystone Lessor Genco LLC  
Shawville Lessor Genco LLC  
PPL Montour, LLC  
Constellation Power Source Generation, Inc.  
Keystone Power LLC  
Duquesne Keystone LLC  
Exelon Generation Company, LLC  
PSEG Fossil LLC

Commencing at various times as described in Paragraph 62 and continuing to the present, Respondents and their predecessors in interest have modified and operated the coal-fired power plants identified below (Portland, Shawville, and Keystone) without obtaining Nonattainment New Source Review (“NNSR” or “Nonattainment NSR”) or Prevention of Significant

Deterioration (“PSD”) permits or minor New Source Review (“minor NSR”) permits authorizing the construction and operation of physical modifications as required by the Act. In addition, for each physical modification at these power plants, Respondents and their predecessors in interest undertook these modifications and operated the coal-fired plants without installing and operating pollution control equipment, as required by the Act. Respondents and their predecessors in interest have also failed to submit timely and complete Title V permit applications with information pertaining to these modifications and to supplement the Title V permit applications.

These violations of the Act and the State Implementation Plan (“SIP”) of the Commonwealth of Pennsylvania have resulted in the release of significant amounts of sulfur dioxide (“SO<sub>2</sub>”), nitrogen oxides (“NO<sub>x</sub>”) and particulate matter (“PM”) into the environment. Until these violations at Portland, Shawville and Keystone are corrected, Respondents will continue to release significant amounts of illegal SO<sub>2</sub>, NO<sub>x</sub> and PM into the environment.

This Notice is issued pursuant to Section 113(a) of the Act, 42 U.S.C. § 7413(a). Section 113(a) of the Act requires the Administrator of the United States Environmental Protection Agency (“EPA”) to notify any person in violation of a SIP or permit of the violations. The authority to issue this Notice has been delegated to the Director of the Air Protection Division of EPA Region III.

## **STATUTORY AND REGULATORY BACKGROUND**

### **I. The Federal Clean Air Act, 42 U.S.C. §§ 7401 *et seq.***

1. The New Source Review (“NSR”) provisions of Parts C and D of Title I of the Act require preconstruction review and permitting for modifications of stationary sources. Pursuant to applicable regulations, if a major stationary source is planning upon making a major modification, then that source must obtain either a PSD permit or a NNSR permit, depending on whether the source is located in an attainment or a nonattainment area for the pollutant being increased above the significance level. To obtain the required permit, the source must agree to the Best Available Control Technology (“BACT”) for an attainment pollutant or achieve the Lowest Achievable Emission Rate (“LAER”) in a nonattainment area. Sources may not operate unless they meet the emission limits that would have been imposed by the permitting process. The relevant regulations for purposes of this Notice are the regulations in effect at the time of the violation.

#### **A. CAA PSD Provisions**

2. Part C of Title I of the Act, 42 U.S.C. §§ 7470-7492, includes Section 165(a) of the Act, 42 U.S.C. § 7475(a), which prohibits the construction or operation of a major modification of a major stationary source in an area designated as attainment without first obtaining a permit under the Act. The operation of a major stationary source after a major modification, unless the source has applied BACT pursuant to 40 C.F.R. § 52.21(j), is prohibited.

3. 40 C.F.R. § 52.21(b)(1)(i)(a) defines a “major stationary source” as any stationary source within one of 28 source categories which emits, or has the potential to emit, 100 tons per year or

more of any air pollutant subject to regulation under the Act. Fossil fuel-fired steam electric plants of more than 250 million British thermal units ("Btu") per hour heat input are included among the 28 source categories.

4. Prior to March 2003, 40 C.F.R. § 52.21(b)(2)(i) defined a "major modification" as any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Act.

5. Prior to March 2003, 40 C.F.R. § 52.21(b)(3)(i) defined "net emissions increase" as the amount by which the sum of the following exceeds zero: a) any increase in actual emissions from a particular physical change or change in method of operation at a stationary source; and (b) any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable. See also 40 C.F.R. § 52.21(b)(21) (defining "actual emissions" both before March 2003 and before July 1992).

6. 40 C.F.R. § 52.21(b)(23) defines "significant" and states that in reference to NO<sub>x</sub>, SO<sub>2</sub>, PM and PM smaller than 10 microns ("PM-10"), significant net emissions increase means an emissions rate that would equal or exceed 40 tons or more per year of NO<sub>x</sub>, 40 tons or more per year of SO<sub>2</sub>, 25 tons or more per year of PM, and 15 tons or more per year of PM-10. 40 C.F.R. § 52.21(b)(23)(i).

7. An applicant for a permit to modify a stationary source is required to submit all information necessary to allow the permitting authority to perform any analysis or make any determination required in order to issue the appropriate permit. 40 C.F.R. § 52.21(n).

8. Any owner or operator of a source or modification subject to 40 C.F.R. § 52.21 who commences construction after the effective date of the PSD regulations without applying for and receiving a PSD permit, shall be subject to appropriate enforcement action. 40 C.F.R. § 52.21(r)(1).

9. 40 C.F.R. § 52.21(i) prohibits the construction of any new major stationary source or any major modification without a permit which states that the source or modification would meet the requirements of 40 C.F.R. § 52.21(j) through (r). 40 C.F.R. § 52.21(j) through (r) require, among other things, that a source subject to PSD regulations undergo a control technology review, apply BACT, and conduct air quality modeling.

#### B. CAA Nonattainment NSR Provisions

10. Part D of Title I of the Act, 42 U.S.C. §§ 7501-7515, sets forth provisions for Nonattainment NSR requirements for areas designated as nonattainment for purposes of meeting the national ambient air quality standards ("NAAQS"). The Nonattainment NSR program is intended to reduce emissions of air pollutants in areas that have not attained NAAQS so that the areas make progress towards meeting the NAAQS.

11. Under Section 172(c)(5) of the CAA, 42 U.S.C. § 7502(c)(5), a state is required to adopt Nonattainment NSR SIP rules that include provisions that require that all permits for the construction and operation of modified major stationary sources within nonattainment areas conform to the requirements of Section 173 of the CAA, 42 U.S.C. § 7503. Section 173 of the CAA, in turn, sets forth a series of requirements for the issuance of permits for major modifications to major stationary sources within nonattainment areas. 42 U.S.C. § 7503.

12. Section 173 of the CAA, 42 U.S.C. § 7503, provides that construction and operating permits may only be issued if: (a) sufficient offsetting emission reductions have been obtained to reduce existing emissions to the point where reasonable further progress towards meeting the ambient air standards is maintained; and (b) the pollution controls to be employed will reduce emissions to LAER. See 42 U.S.C. § 7501(3) (defining LAER).

13. Section 182f of the CAA, 42 U.S.C. § 7511a(f), sets forth requirements to take effect no later than November 15, 1992, relating to the construction and operation of new or modified major stationary sources of NO<sub>x</sub> located within nonattainment areas for ozone. Section 182f of the CAA, 42 U.S.C. § 7511a(f), defines NO<sub>x</sub> as a pollutant that must be treated as a contributor to the criteria pollutant ozone.

14. Sections 171-193 of the CAA, 42 U.S.C. §§ 7501-7515, impose SIP requirements for nonattainment areas. Among other things, the statute requires that states adopt SIP provisions establishing a Nonattainment NSR program which includes permitting requirements and other requirements governing construction and operation of new and modified major sources in nonattainment areas. A state's NNSR program must include a mandate that any modified source comply with LAER. See Section 173(a)(2) of the CAA, 42 U.S.C. § 7503(a)(2). LAER typically includes installation and operation of state-of-the-art air pollution control equipment. A state's NNSR program must also include provisions requiring the modified source to obtain offsetting emissions reductions. See Section 173(a)(1) of the CAA, 42 U.S.C. § 7503(a)(1).

### C. Title V

15. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), provides that no source may operate without a Title V permit after the effective date of any permit program approved or promulgated under Title V of the Act.

16. 40 C.F.R. § 70.1(b) provides that: "All sources subject to these regulations shall have a permit to operate that assures compliance by the source with all applicable requirements."

17. U.S. EPA promulgated final approval of the Pennsylvania Title V program on August 29, 1996. 40 C.F.R. Part 70, Appendix A. Pennsylvania's Title V program became effective on that date. See 61 Fed. Reg. 39597.

18. The Pennsylvania regulations governing the Title V permitting program are located at 25 Pa. Code §§ 127.401-127.464.

19. 40 C.F.R. § 70.7(b) provides that no source subject to 40 C.F.R. Part 70 requirements may

operate without a permit as specified in the Act. See also 25 Pa. Code § 127.402.

20. Section 503 of the CAA, 42 U.S.C. § 7661b, sets forth the requirement to timely submit an application for a permit, including information required to be submitted with the application.

21. Section 504(a) of the CAA, 42 U.S.C. § 7661c(a), requires that each Title V permit include enforceable emission limitations and standards, a schedule of compliance, and other conditions necessary to assure compliance with applicable requirements, including those contained in a state implementation plan. 42 U.S.C. § 7661c(a); see also 40 C.F.R. § 70.6 and 25 Pa. Code §§ 127.411 - 127.412 and 127.441.

22. 40 C.F.R. § 70.5(a) and (c) require timely and complete permit applications for Title V permits with required information that must be submitted and 40 C.F.R. § 70.6 specifies required permit content. See also 25 Pa. Code §§ 127.411 – 127.412 and 127.441.

23. 40 C.F.R. § 70.5(b) provides that: “Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.” See also 25 Pa. Code § 127.414.

24. The Pennsylvania Department of Environmental Protection (“PaDEP”) has issued several permits for the emission sources at Portland, Shawville and Keystone. Portland’s Title V Permit, # 48-00006, was issued originally on January 5, 2000 and expired on January 31, 2005. REMA submitted a permit application for Portland in July 2004. Shawville’s Title V Permit, # 17-00001, was issued on November 7, 2000 with an effective date of May 13, 2005. Keystone’s Title V Permit, # 03-00027, was issued originally on September 28, 2000 and reissued on December 18, 2006 with a revision on June 26, 2008 and a new effective date of June 26, 2008.

## **II. Pennsylvania’s PSD, Nonattainment NSR, and Minor NSR Provisions**

25. The applicable SIP for the Commonwealth of Pennsylvania (“Pennsylvania SIP”) has been approved by EPA (see 40 C.F.R. § 52.2020(b)) and includes 25 Pa. Code § 127.11, which provides that a person may not cause or permit the construction or modification of an air contamination source unless the modification has been approved by PaDEP.

### **A. Pennsylvania’s PSD Provisions**

26. Pursuant to Part C of the Act, the Pennsylvania SIP adopts the PSD requirements promulgated at 40 CFR Part 52 by the Administrator of EPA under Section 161 of the CAA (42 U.S.C. § 7471). See 25 Pa. Code §§127.81 - 127.83; 40 C.F.R. § 52.2058 (49 Fed. Reg. 33128, Aug 21, 1984).



B. Pennsylvania's Nonattainment NSR Provisions

(i) Nonattainment NSR Provisions in effect prior to January 8, 1998

27. Pursuant to Part D of the Act, and until January 8, 1998, the Pennsylvania SIP included 25 Pa. Code Chapter 127 Subchapter C - Special Permit Requirements for Sources Locating in or Significantly Impacting Nonattainment Areas (Former Subchapter C). Former Subchapter C included 25 Pa. Code §§ 127.61-127.73 which contained special permit requirements for sources in non-attainment areas. Pursuant to 25 Pa. Code § 127.61 of Former Subchapter C, no person may cause, suffer or permit the construction or modification of an air contamination source in a nonattainment area unless PaDEP determines the requirements of Former Subchapter C are met.

28. Pursuant to 25 Pa. Code § 127.63 of Former Subchapter C, sources with potential emissions equal to or greater than 100 tons per year and meeting the additional requirements of 25 Pa. Code § 127.63 were subject to special permit requirements.

29. Former Subchapter C of the Pennsylvania SIP included 25 Pa. Code § 127.63(1) which subjected sources in nonattainment areas to the special permit requirements of § 127.65 if the source had potential emissions equal to or greater than 100 tons per year ("tpy"); and the source undergoes a major modification or the source is a new source with maximum allowable sulfur oxide ("SOx") or particulate emissions greater than 50 tpy, 1,000 pounds per day, or 100 pounds per hour, whichever is more restrictive.

30. Former Subchapter C of the Pennsylvania SIP included 25 Pa. Code § 127.63(4), which provided that sources must still comply with the special permit conditions of Former Subchapter C (except for § 127.65(1), concerning LAER) where the modifications to existing sources or the construction of new sources individually do not exceed the maximum allowable emission levels specified in § 127.63 (1)-(3) but the aggregate of maximum allowable emissions in plan approval applications submitted to and approved by PaDEP after June 30, 1979 and not previously subject to the conditions of this section exceed the maximum allowable emission levels or significance levels in § 127.63(1)-(3).

31. Former Subchapter C of the Pennsylvania SIP included 25 Pa. Code § 127.65(1), which required new or modified sources subject to special permit requirements to comply with LAER.

32. Former Subchapter C of the Pennsylvania SIP included 25 Pa. Code § 127.65(3) which required emissions from new or modified sources subject to special permit requirements to be offset by emission reductions or emission offset credits under § 127.66.

33. The term "potential emission rate" is defined in 25 Pa. Code § 121.1 as the total weight rate at which a particular air contaminant, in the absence of air cleaning devices, would be emitted per unit of time from an air contamination source when the source is operated at its rated capacity.

34. The term "maximum allowable emissions" is defined in 25 Pa. Code §121.1 as the emission rate calculated using the maximum rated capacity of the source unless the source is subject to enforceable permit conditions which limit operating rate or hours of operation or both, and the most stringent of the following: a) applicable new source performance standards or standards for hazardous pollutants set forth in 40 C.F.R. Parts 60 and 61; b) applicable emission limitation under 25 Pa. Code Chapters 121-143; c) the emission rate specified as an enforceable permit.

35. Until January 8, 1998, the term "major modification" was defined in the Pennsylvania SIP (25 Pa. Code §121.1) as a physical change in a source or change in the method of operation of a source which would increase the maximum allowable emissions for the source exceeding 50 tpy, 1000 pounds per day or 100 pounds per hour, whichever is more restrictive, for PM, SO<sub>x</sub>, carbon monoxide or volatile organic compounds.

36. Until January 8, 1998, the term "lowest achievable emission rate" was defined in the Pennsylvania SIP (25 Pa. Code §121.1) as the rate of emissions based on the following, whichever is more stringent: a) The most stringent emission limitation which is contained in the Federal implementation plan of a state for the class or category of source unless the owner or operator of the proposed source demonstrates that such limitations are not achievable; or, b) the most stringent emission limitation which is achieved in practice by the class or category of source.

(ii) Nonattainment NSR Provisions in effect after January 8, 1998

37. Since January 8, 1998, the Pennsylvania SIP currently requires, pursuant to Part D of the Act, that no construction or operation of a major modification occur unless certain criteria are met. 25 Pa. Code §§ 127.201 - 127.216.

38. Pursuant to 25 Pa. Code § 127.201, a person may not construct or modify an air contamination facility in a nonattainment area unless PaDEP determines the requirements of 25 Pa. Code §§127.201-127.216 are met. 25 Pa. Code § 121.1 defines modification as a physical change or change in method of operation of a source that would increase the amount of an air contaminant emitted or result in the emission of a new air contaminant (excluding routine maintenance, repair and replacement).

39. Pursuant to 25 Pa. Code § 127.203, new sources or sources making modifications which increase their potential to emit (when aggregated with other emission increases per 25 Pa. Code § 127.211) over the significance thresholds specified (for PM, SO<sub>x</sub> and NO<sub>x</sub>) are required to comply with the special permit requirements.<sup>1</sup>

40. Pursuant to 25 Pa. Code § 127.205, PaDEP will not issue a plan approval or operating permit for a new or modified facility or allow continued operations under an existing permit or plan approval unless the facility meets the following special requirements:

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<sup>1</sup> The relevant significance thresholds in Pennsylvania's NNSR program are 15 tpy of PM-10, 25 tpy of PM, 40 tpy of SO<sub>x</sub>, 50 tpy of carbon monoxide, and 40 tpy of NO<sub>x</sub>. 25 Pa. Code § 127.203.

- facility complies with LAER (as defined in 25 Pa. Code § 121.1);
- facility is in compliance with the Act;
- facility obtains offsets and emission reduction credits in accordance with 25 Pa. Code §§ 127.206, 127.210 and 127.211;
- and facility conducts analysis of sites.

41. Pursuant to 25 Pa. Code § 127.211, an applicability determination will establish whether a modification which results in an emissions increase is a major modification for 25 Pa. Code § 127.203 and special permit requirements.<sup>2</sup>

### C. Pennsylvania's Minor NSR and Title V Provisions

42. The Pennsylvania SIP includes 25 Pa. Code § 127.25, which provides that “[a] person may not permit the operation of a source subject to § 127.11 (relating to plan approval requirements), unless the source and air cleaning devices identified in the application for the plan approval and the plan approval issued to the source, are operated and maintained in accordance with specifications in the application and conditions in the plan approval issued by the Department. A person may not cause or permit the operation of an air contaminant source subject to this chapter in a manner inconsistent with good operating practices.”

43. The PA SIP includes 25 Pa. Code § 127.11, which provides that “[e]xcept as provided in §§ 127.11a and 127.215 (relating to reactivation of sources; and reactivation), a person may not cause or permit the construction or modification of an air contamination source, the reactivation of an air contamination source after the source has been out of operation or production for 1 year or more, or the installation of an air cleaning device on an air contamination source, unless the construction, modification, reactivation or installation has been approved by the Department.”

44. The PA SIP includes 25 Pa. Code § 127.402 which provides that “[a] person may not operate a stationary air contamination source unless the Department has issued to the person a permit to operate the source under this article in response to a written application for a permit submitted on forms containing the information the Department may prescribe....”

45. The PA SIP includes 25 Pa. Code §§ 127.411 and 127.412 which contain requirements for the content of permit applications and compliance reviews. 25 Pa. Code § 127.414 of the PA SIP provides that “[t]he applicant shall provide additional information as necessary to address requirements that become applicable to the source after the date it files a complete application but prior to the Department taking action on the permit application. The applicant shall provide supplementary facts or corrected information upon becoming aware that it has submitted incorrect information or failed to submit relevant facts. Except as otherwise required by this article, the Clean Air Act or the regulations thereunder, the permittee shall submit additional information as necessary to address changes occurring at the source after the date it files a complete application but prior to the Department taking action on the permit application.”

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<sup>2</sup> “Major modification” is defined in 25 Pa. Code § 121.1 as a physical change or change in operation that results in emissions increases over the significance thresholds.



46. The PA SIP includes 25 Pa. Code § 127.441 which provides that an operating permit “shall incorporate by reference the emission and performance standards and other requirements of the act, the Clean Air Act or the regulations thereunder” and “shall incorporate the monitoring, recordkeeping and reporting requirements required by Chapter 139 (relating to sampling and testing) and other monitoring, recordkeeping or reporting requirements of this article and additional requirements related to monitoring, recordkeeping and reporting required by the Clean Air Act and the regulations thereunder . . . .”

47. The PA SIP includes 25 Pa. Code § 127.443 which provides that “[a] person may not cause or permit the operation of a source the construction, modification or reactivation of which, or the installation of an air cleaning device on which, is subject to § 127.11 (relating to plan approval requirements), unless the Department has issued a permit to operate the source.”

48. The PA SIP includes 25 Pa. Code § 127.444, which provides that “[a] person may not cause or permit the operation of a source subject to this article unless the source and air cleaning devices identified in the application for the plan approval and operating permit and the plan approval issued to the source are operated and maintained in accordance with specifications in the application and conditions in the plan approval and operating permit issued by the Department. A person may not cause or permit the operation of an air contamination source subject to this chapter in a manner inconsistent with good operating practices.”

49. The PA SIP provisions identified in this NOV are all federally enforceable pursuant to Sections 110 and 113 of the CAA, 42 U.S.C. §§ 7410 and 7413.

### **FACTUAL BACKGROUND**

50. Emissions of SO<sub>2</sub> can cause premature deaths and asthma attacks and is a health threat when it forms fine particulates. SO<sub>2</sub> can contribute to the formation of Acid Rain, which can damage trees, crops and historic buildings. Acid Rain can turn soil, lakes and streams acidic, leaving them unable to support life. SO<sub>2</sub> gases contribute to haze, dramatically reducing visibility.

51. Emissions of NO<sub>x</sub> contribute to the formation of low-level ozone. Ground level ozone, or smog, is formed when NO<sub>x</sub>, hydrocarbons and sunlight combine. Children and people with lung diseases such as asthma and people who work outside can find it difficult to breathe during periods of high levels of ozone. NO<sub>x</sub> also contributes to the formation of acid rain.

52. PM is the term for solid or liquid particles found in the air. Smaller PM of a diameter of 10 micrometers or less is referred to as PM<sub>10</sub>, and even smaller PM of a diameter of 2.5 micrometers or less is referred to as PM<sub>2.5</sub>. Breathing any variation of PM at concentrations in excess of existing ambient air standards may increase the chances of premature death, damage to lung tissue, cancer, or respiratory disease. The elderly, children, and people with chronic lung disease, influenza, or asthma, tend to be especially sensitive to the effects of PM. PM can also reduce visibility and damage man-made materials.

53. Portland is a coal-fired power plant located in Upper Mount Bethel Township, Northampton County in Portland, Pennsylvania. Portland is presently owned and operated by REMA.
54. Shawville is a coal-fired power plant located in Bradford Township, Clearfield County in Shawville, Pennsylvania. Shawville is presently owned by Shawville Lessor Genco, LLC. Shawville is operated by Reliant Northeast. REMA is the lessee of Shawville.
55. Keystone is a coal-fired power plant in Plumcreek Township, which is in Armstrong and Indiana Counties in Shelocta, Pennsylvania. Keystone is presently owned by PPL Montour, LLC, Constellation Power Source Generation, Inc, Keystone Power LLC, Duquesne Keystone LLC, Exelon Generation Company, LLC, PSEG Fossil LLC, and Keystone Lessor Genco, LLC. REMA is a lessee of Keystone Lessor Genco, LLC's interest in Keystone. Reliant Northeast operates Keystone.
56. REMA, Reliant Northeast, Keystone Lessor Genco LLC, Shawville Lessor Genco LLC, PPL Montour, LLC, Constellation Power Source Generation, Inc, Keystone Power LLC, Duquesne Keystone LLC, Exelon Generation Company, LLC, and PSEG Fossil LLC, are the owners or operators of the facilities that are the subject of this Notice and are owners or operators as defined in the Act.
57. Portland is a fossil fuel-fired steam-electric generating utility plant, with coal as the primary fuel. The facility is comprised of two coal-fired generating units, which began operation in 1958 and 1962 respectively, with a total capacity of approximately 400 megawatts ("MW") and three dual-fueled combustion turbines with a generating capacity of 185 MW.
58. Shawville is a fossil fuel-fired steam-electric generating utility plant, with coal as the primary fuel. Shawville's four coal-fired generating units (566 MW combined) and three diesel units have a total generating capacity of 572 MW. Of the coal units, units 1 and 2 began operation in 1954, while Units 3 and 4 began operation in 1959 and 1960, respectively.
59. Keystone is a fossil fuel-fired steam-electric generating utility plant, with coal as the primary fuel. Keystone has two coal-fired generating units (1,700 MW) and four diesel units (12 MW) with a total generating capacity of 1,712 MW. Units 1 and 2 began operation in 1967 and 1968, respectively.
60. Portland, Shawville, and Keystone are each fossil fuel-fired steam electric plants of more than 250 million Btu per hour heat input that emit 100 tpy or more of NO<sub>x</sub> and SO<sub>2</sub>. Portland, Shawville and Keystone are major stationary sources, major sources, sources, and air contamination sources as defined in the Act and its implementing regulations and in the Pennsylvania SIP.
61. Portland, Shawville, and Keystone are located in areas that have the following attainment classifications from 1980 to the present:

**Portland (Northampton County):**

SO<sub>2</sub>- Attainment since 1980  
PM (TSP)- Nonattainment (1980-1983); Attainment since 1983  
PM-10 – Attainment/Unclassified since 1987  
PM<sub>2.5</sub>- Attainment until 12/17/2008 for the 1997 annual and 24-hour standard;  
Nonattainment as of 12/22/08 for the 2006 24-hour standard  
NO<sub>2</sub>- Attainment since 1980  
Ozone – O<sub>3</sub> Nonattainment (1980-1997)  
    1 hr. O<sub>3</sub> “Gen. Std.” Nonattainment (Dec. 6, 1991- June 15, 2005)  
    8 hr. O<sub>3</sub> Nonattainment (June 15, 2004 – March 4, 2008)  
        Attainment since March 4, 2008 (but in OTR)

**Shawville (Clearfield County):**

SO<sub>2</sub>- Attainment since 1980  
PM (TSP)- Attainment since 1980  
PM-10 – Attainment/Unclassified since 1987  
PM-2.5 – Unclassified/Attainment since 2005  
NO<sub>2</sub>- Attainment since 1980  
Ozone – O<sub>3</sub> “Gen. Std.” Nonattainment (1980-1987); Attainment (1987-1997)  
    1 hr. O<sub>3</sub> Nonattainment (1998-2001); Unclassified/Attainment (2001-2005)  
    8 hr. O<sub>3</sub> Nonattainment (since June 15, 2004)

**Keystone (Armstrong County (Plumcreek Township) and Indiana County):**

SO<sub>2</sub>- Attainment since 1980 (for Plumcreek Township)  
PM (TSP)- Attainment since 1980  
PM-10 – Unclassified/Attainment since 1987  
PM-2.5 – Nonattainment since 2005 for the 1997 annual standard; Nonattainment as of  
12/22/08 for the 2006 24-hour standard.  
NO<sub>2</sub>- Attainment since 1980  
Ozone – O<sub>3</sub> “Gen. Std.” Nonattainment (1980-1997)  
    -Armstrong Co. 1 hr. O<sub>3</sub> Nonattainment (1991- Nov. 19, 2001); Att. since 11/2001  
        8 hr. O<sub>3</sub> Nonattainment (since June 15, 2004)  
  
    -Indiana Co. 1 hr. O<sub>3</sub> Unclassified/Attainment (1990-2005)  
        8 hr. O<sub>3</sub> Basic Nonattainment (since June 15, 2004)

## **FINDING OF VIOLATIONS**

62. EPA has identified capital improvement projects at Portland, Shawville, and Keystone, beginning in 1986 for Portland Unit 1, in 1987 for Portland Unit 2, in 1985 for Keystone Unit 1, in 1984 for Keystone Unit 2, in 1987 for Shawville Units 1 and 3, in 1986 for Shawville Unit 2, and 1992 for Shawville Unit 4, which were modifications (and major modifications) that each caused a significant net emissions increase in at least one of the PSD/Nonattainment NSR regulated pollutants. None of these modifications (or major modifications) underwent PSD/Nonattainment NSR permitting review or resulted in the installation of BACT or LAER controls for those pollutants for which emissions significantly increased at the three plants. To EPA's knowledge, none of the requirements contained in 40 C.F.R. § 52.21(j) through (r), nor the Commonwealth of Pennsylvania's requirements contained in 25 Pa. Code §§ 127.81 - 127.83, §127.11, § 127.25, §127.402, §127.411, §127.443, §127.444, Former Subchapter C (§§127.61-127.73), and §§127.201-127.216 were met prior to construction of the modifications (or major modifications) at Portland, Shawville, or Keystone. The modifications are identified in Attachments 1, 2 and 3 to this Notice for Portland, Shawville and Keystone, respectively.

63. The violations noted in Paragraph 62 for the modifications identified in Attachment 1 continue until Respondents comply with state and federal Clean Air Act requirements and install, apply and operate BACT or LAER.

64. Since August 29, 1996, Respondents have failed to submit timely and complete Title V permit applications for Portland, Shawville, and Keystone with information pertaining to the modifications identified in Paragraph 62 at the plants and with information concerning all applicable requirements, including, but not limited to, the requirement to apply, install and operate BACT or LAER for NO<sub>x</sub>, SO<sub>2</sub> and/or PM at the plants and also failed to supplement or correct the Title V permit applications for these plants in violation of Sections 502, 503 and 504 of the Act, 42 U.S.C. §§ 7661a, 7661b and 7661c; the regulations at 40 C.F.R. Part 70, including, but not limited to, 40 C.F.R. §§ 70.1(b), 70.5(a), (b) and (c), 70.6 and 70.7(b); and the Pennsylvania SIP's Title V provisions at 25 Pa. Code §§ 127.401-127.464.

65. The violations noted in Paragraph 64 continue until Respondents submit complete Title V permit applications for Portland, Shawville, and Keystone.

## **ENFORCEMENT**

Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), provides that at any time after the expiration of 30 days following the date of the issuance of this NOV, the EPA Administrator, or an EPA official authorized to act as his representative, may, without regard to the period of violation:

- (a) issue an order requiring compliance with the requirements of the state implementation plan or permit, or

- (b) issue an administrative penalty order pursuant to Section 113(d) for civil administrative penalties of up to \$25,000 per day of violation for violations occurring on or before January 30, 1997, \$27,500 per day of violation for violations occurring after January 30, 1997, \$32,500 per day of violation for violations occurring after March 14, 2004, and \$37,500 per day of each violation for violations occurring after January 12, 2009 or
- (c) bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties of not more than \$25,000 per day for each violation occurring on or before January 30, 1997, \$27,500 per day of each violation for violations occurring after January 30, 1997, \$32,500 per day of each violation for violations occurring after March 14, 2004, and \$37,500 per day of each violation for violations occurring after January 12, 2009.

Section 113(c) of the Act, 42 U.S.C. § 7413(c), further provides for criminal penalties or imprisonment, or both, for any person who knowingly violates any plan or permit requirement more than 30 days after the date of the issuance of a NOV.

For violations of the Act which are not violations of a SIP, Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), provides that the EPA Administrator, or an EPA official authorized to act as his representative, may:

- (a) issue an administrative penalty order in accordance with Section 113(d), or
- (b) issue an order requiring compliance with such requirement or prohibition of the Act, or
- (c) bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties of not more than \$25,000 per day for each violation occurring on or before January 30, 1997, \$27,500 per day of each violation for violations occurring after January 30, 1997, \$32,500 per day of each violation for violations occurring after March 14, 2004, and \$37,500 per day of each violation for violations occurring after January 12, 2009, or
- (d) request the Attorney General commence a criminal action in accordance with Section 113(c).



### **PENALTY ASSESSMENT CRITERIA**

Section 113(e)(1) of the Act, 42 U.S.C. § 7413(e)(1), states that the court, in an action for assessment of civil or criminal penalties shall, as appropriate in determining the amount of penalty to be assessed, take into consideration (i.e., in addition to such other factors s justice may require) the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, payment by the violator of penalties previously assessed for the same violation, the economic benefit of non-compliance, and the seriousness of the violation.

Section 113(e)(2) of the Act, 42 U.S.C. § 7413(e)(2) allows the court to assess a penalty for each day of violation. For purposes of determining the number of days of violation, where the United States makes a prima facie showing that the conduct or events giving rise to this violation are likely to have continued or recurred past the date of the NOV, or a previously issued air pollution control agency NOV for the same violation, the days of violation shall be presumed to include the date of this NOV, or the previous NOV, and each and every day thereafter, until respondent establishes that continuous compliance has been achieved; except to the extent that respondent can prove by the preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature.

### **OPPORTUNITY FOR CONFERENCE**

The respondent may, upon request, confer with EPA. The conference will enable respondent to present evidence bearing on the finding of violation, on the nature of violation, and on any efforts it may have taken or proposes to take to achieve compliance. Respondent has a right to be represented by counsel. A request for a conference must be made within 10 days of receipt of this NOV. A request for a conference, and/or any other inquiries concerning the NOV should be made in writing to:

Richard P. Killian  
Senior Environmental Enforcement Case Engineer  
Air Protection Division  
U. S. Environmental Protection Agency - Region III  
Mail Code 3AP12  
1650 Arch Street  
Philadelphia, PA 19103-2029  
(215) 814-2159

### **EFFECTIVE DATE**

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This NOV shall be effective immediately upon receipt.

### **QUESTIONS REGARDING NOV**

If you have any questions concerning the issuance of this NOV, you may contact Richard P. Killian of my staff at 215-814-2159. If you are represented by counsel, your counsel may contact Donna L. Mastro, Senior Assistant Regional Counsel, at 215-814-2777.

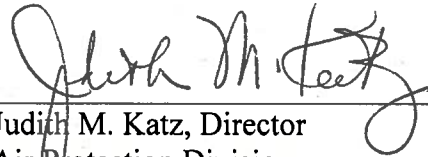
### **DISCLOSURE INFORMATION**

Certain companies may be required to disclose to the Securities and Exchange Commission ("SEC") the existence of certain pending or known to be contemplated environmental legal proceedings (administrative or judicial) arising under federal, state or local environmental laws. Please see the attached "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings" for more information about this requirement and to aid you in determining whether your company may be subject to the same.

EPA is enclosing an Information Sheet entitled "U.S. EPA Small Business Resources," (EPA 300-F-99-004, September 1999), which identifies a variety of compliance assistance and other tools available to assist small businesses in complying with federal and state environmental laws.

1/14/2009

Date

  
Judith M. Katz, Director  
Air Protection Division

cc:

Joyce E. Epps, PADEP  
David Aldenderfer, PADEP  
Mark Wayner, PADEP  
Mark Wejksznar, PADEP